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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board held a Special meeting on December 5, 2002, in Hearing Room #1, at the offices of the New Motor Vehicle Board ("Board").

2. ROLL CALL

Frederick E. (Fritz) Hitchcock, President of the Board, called the Special meeting to order at 9:10 a.m.

Present:	Robert V. Branzuela	Tom Novi
	Wendy Brogin	Executive Director
	Robert T. (Tom) Flesh	Howard Weinberg
	Frederick E. (Fritz) Hitchcock	General Counsel
	Angelo Quaranta (arrived 9:16 a.m.)	Robin Parker
	Solon Soteras	Senior Staff Counsel
	Glenn E. Stevens	Cara O'Neill-Stewart
	David W. Wilson	Staff Counsel

Absent: Alan J. Skobin

3. CLOSED EXECUTIVE SESSION

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Mr. Stevens, Board Vice President, presided over Agenda items 3(a) and 3(b). The dealer members did not participate in these items because they involved a dispute between a franchisee and franchisor.

a. CONSIDERATION OF PROPOSED RULING

CARS DAWYDIAK, INC. v. PIAGGIO USA, INC.
Protest No. PR-1817-02

Consideration of the Administrative Law Judge's Proposed Ruling on Respondent's Motion to Dismiss the Protest, by the Public members of the Board.

Oral arguments were presented before the Public members of the Board. Michael M. Sieving, Esq., of the Law Offices of Michael M. Sieving represented Protestant. Josh S. Ridout, Esq., of Paul, Hastings, Janofsky & Walker LLP represented Respondent.

The Public members of the Board deliberated in Closed Executive Session. Mr. Flesh moved to adopt the Administrative Law Judge's Proposed Ruling as the Board's Final Decision in this matter. Mr. Quaranta seconded the motion. Mr. Stevens opposed the motion. The motion carried by a four-to-one vote.

b. CONSIDERATION OF PROPOSED ORDER

VICTORY AUTO PLAZA, INC. v. NISSAN DIESEL AMERICA, INC.
Protest No. PR-1826-02

Consideration of the Administrative Law Judge's Proposed Order Granting Motion to Dismiss, by the Public members of the Board.

There were no appearances for the parties in this matter.

The Public members of the Board deliberated in Closed Executive Session. Mr. Flesh moved to adopt the Administrative Law Judge's Proposed Order as the Board's Final Decision in this matter. Mrs. Brogin seconded the motion. The motion carried unanimously. The members relied on the opinion in *Sonoma Subaru, Inc. v. New Motor Vehicle Board* in adopting the Proposed Order and requested that this reliance be noted on the signature page that accompanies the Proposed Order.

4. OPEN SESSION

The Public members returned to Open Session. Mr. Stevens announced the decisions on Agenda items 3(a) and (b).

a. **FIRST CONSIDERATION OF PETITION PURSUANT TO SECTION 557 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS**

RAY FLADEBOE LINCOLN MERCURY, INC. a California Corporation v. AMERICAN ISUZU MOTORS, INC.
Petition No. P-449-02

First consideration by the Public members of the Board pursuant to Title 13, California Code of Regulations, section 554, et seq.

This matter was postponed pending the arrival of Respondent's counsel who was delayed.

b. **CONSIDERATION OF REQUEST THAT THE BOARD ORDER AMERICAN ISUZU MOTORS, INC. TO ISSUE AN OCCUPATIONAL LICENSING BRANCH FORM NO. OL-124, TO FLADEBOE AUTOMOTIVE, INC.**

RAY FLADEBOE LINCOLN MERCURY, INC. a California Corporation v. AMERICAN ISUZU MOTORS, INC.
Petition No. P-449-02

Consideration of Petitioner's request that the Board issue an order directing American Isuzu Motors, Inc. to issue an Occupational Licensing Branch Form No. OL-124 approving the assignment of the Isuzu franchise to Fladeboe Automotive, Inc., by the Public members of the Board.

This matter was postponed pending the arrival of Respondent's counsel who was delayed.

5. **CREATION OF A GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, AND APPOINTMENT OF MEMBERS THERETO, BY THE BOARD PRESIDENT, FREDERICK E. (FRITZ) HITCHCOCK**

Mr. Hitchcock presided over the remaining Agenda items 5 through 17. The members were provided with a memorandum from Tom Novi concerning the creation of a Government and Industry Affairs Committee. Mr. Novi reported that under the Parliamentary Procedures, the President is allowed to form committees and appoint members thereto. It was recommended that the Committee Chair be appointed for a two-year term and the member be appointed on an ad hoc basis. Mr. Hitchcock created the Government and Industry Affairs Committee. The first term of the new Committee Chair is two years and thereafter the Chair serves a one-year term. Mr. Hitchcock appointed Mr. Flesh Chair of the Committee. The appointment of the ad hoc member was left vacant pending the election of a new Board President.

6. STATUS REPORT ON IMPLEMENTATION OF THE REVISED TRANSCRIPT POLICY THAT WOULD ALLOW LITIGANTS TO PURCHASE HEARING OR MEETING TRANSCRIPTS FROM THE COURT REPORTER INSTEAD OF THE BOARD - ADMINISTRATION COMMITTEE

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning the revised transcript policy that would allow the litigants to purchase hearing or meeting transcripts from the court reporter instead of the Board. Miss Kindel reported that the Department of Motor Vehicles approved the change to the existing contract. Once the contract is approved by the Department of General Services ("DGS"), the staff will implement the revised policy. Subsequent to the meeting, the contract was approved by DGS.

7. CONSIDERATION OF THE 2003 REVISIONS TO THE GUIDE TO THE NEW MOTOR VEHICLE BOARD - ADMINISTRATION COMMITTEE

The members were provided with a memorandum and revised Guide to the New Motor Vehicle Board from Howard Weinberg. Mr. Weinberg summarized the changes to the Guide that included new sections on subpoenas, hearings open to the public and protective orders, and transcripts of Board proceedings. Mr. Flesh moved to adopt the revised Guide. Mr. Soteras seconded the motion. The motion carried unanimously.

4. OPEN SESSION

With the arrival of Respondent's counsel, Mr. Stevens presided over Agenda items 4(a) and 4(b). The dealer members did not participate in these items because they involved a dispute between a franchisee and franchisor.

a. FIRST CONSIDERATION OF PETITION PURSUANT TO SECTION 557 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS

RAY FLADEBOE LINCOLN MERCURY, INC. a California Corporation v. AMERICAN ISUZU MOTORS, INC.
Petition No. P-449-02

First consideration by the Public members of the Board pursuant to Title 13, California Code of Regulations, section 554, et seq.

Oral arguments were presented before the Public members of the Board. Michael M. Sieving, Esq., of the Law Offices of Michael M. Sieving, represented Petitioner. Bruce Ishimatsu, Esq., of Bryan Cave LLP, represented Respondent.

Mr. Flesh moved that the Board accept jurisdiction of the Petition and assign it to an administrative law judge for hearing. Mrs. Brogin seconded the motion. Mr. Soteras opposed the motion. The motion carried by a four-to-one vote.

b. **CONSIDERATION OF REQUEST THAT THE BOARD ORDER AMERICAN ISUZU MOTORS, INC. TO ISSUE AN OCCUPATIONAL LICENSING BRANCH FORM NO. OL-124, TO FLADEBOE AUTOMOTIVE, INC.**

RAY FLADEBOE LINCOLN MERCURY, INC. a California Corporation v. AMERICAN ISUZU MOTORS, INC.
Petition No. P-449-02

Consideration of Petitioner's request that the Board issue an order directing American Isuzu Motors, Inc. to issue an Occupational Licensing Branch Form No. OL-124 approving the assignment of the Isuzu franchise to Fladeboe Automotive, Inc., by the Public members of the Board.

Oral arguments were presented before the Public members of the Board. Michael M. Sieving, Esq., of the Law Offices of Michael M. Sieving, represented Petitioner. Bruce Ishimatsu, Esq., of Bryan Cave LLP, represented Respondent.

Mr. Quaranta moved that the hearing on this matter be continued to the January 7, 2003, General meeting (subsequently changed to January 8, 2003) and the Board would make a decision concerning the issuance of the OL-124. In the event the parties resolve this issue, the Board requests that the staff be notified. Mr. Soteras seconded the motion. Mr. Flesh opposed the motion. The motion carried by a four-to-one vote.

8. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR THE 1ST QUARTER OF FISCAL YEAR 2002-2003 - FISCAL COMMITTEE**

Mr. Hitchcock resumed as the presiding officer over the remaining Agenda items. The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning the Board financial condition for the 1st quarter of fiscal year 2002-2003. Miss. Kindel reported that the Board had expended 18% of its appropriated budget which was within the Board's budget allocation.

9. **ANNUAL STATUS REPORT CONCERNING THE BOARD'S COLLECTION OF ITS ANNUAL FEE (13 CCR § 553.10) - FISCAL COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning the collection of the annual Board fee. All licensees, except Ransomes America Corporation, have paid the annual fee. At the January 2003, General meeting, Ransomes will be directed to appear and explain its failure to pay.

10. **CONSIDERATION OF THE 2003 RULEMAKING CALENDAR - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and 2003 Rulemaking Calendar from Tom Novi and Robin Parker. Ms. Parker provided a handout that contained the

rulemaking calendar and text of an additional proposed regulation (13 CCR § 553.40). The proposed regulation allows parties to a petition, appeal, or protest to pay filing fees with a credit card in addition to a check or money order. The members are scheduled to review the text of Title 13 of the California Code of Regulations section 553.40 at the January 2003, General meeting. Ms. Parker asked that the members approve the Rulemaking Calendar that included the additional proposed regulation subject to their approval of the text in January 2003. Mr. Flesh moved to adopt Ms. Parker's recommendation. Mr. Stevens seconded the motion. The motion carried unanimously.

11. STATUS REPORT ON THE COOPERATIVE REVIEW OF THE BOARD'S STATUTES AND REGULATIONS - POLICY AND PROCEDURE COMMITTEE

Mr. Weinberg provided a verbal report on the Board's cooperative review of its statutes and regulations. Mr. Weinberg indicated that interested parties were sent a report as to the changes the Board intended to make. The members were provided with a letter opposing the regulatory changes from the Alliance of Automobile Manufacturers. Mr. Weinberg indicated that the Alliance would comment during the rulemaking process.

12. CONSIDERATION OF PROPOSED BOARD ACTION CONCERNING VEHICLE CODE §§ 3065 AND 3065.1 - POLICY AND PROCEDURE COMMITTEE

The members were provided with a memorandum from Howard Weinberg concerning proposed amendments to Vehicle Code sections 3065 and 3065.1. It was suggested that no further action be taken on the following two proposals:

- 1) A provision be added to maintain the status quo for warranty reimbursement protests (§3065), i.e., no charge backs against the dealer until the dispute is settled, and a provision to create a mechanism to permit extension of the audit period beyond 12 months with evidence of fraud, at franchisor's request, and
- 2) A provision be added to maintain the status quo for incentive protests (§3065.1), i.e., no charge backs against the dealer until the dispute is settled, and a means to permit extension of the audit period beyond 18 months with evidence of fraud, at franchisor's request.

Mrs. Brogin moved to adopt the recommendation of no further action. Mr. Quaranta seconded the motion. The motion carried unanimously.

13. STATUS REPORT ON THE BOARD'S REQUEST FOR FRAMEWORK AGREEMENTS AND DEALER SALES AND SERVICE AGREEMENTS FROM MANUFACTURERS AND DISTRIBUTORS - POLICY AND PROCEDURE COMMITTEE

Mr. Weinberg provided a verbal report on the Board's request for framework agreements and dealer sales and service agreements from manufacturers and distributors. Mr. Weinberg reported that no framework agreements were provided to the Board because the

agreements are confidential. The members requested a report at the January 2003, General meeting concerning whether the Federal legislation, House of Representatives Bill 2215 which makes arbitration voluntary in dealer-manufacturer disputes, applies to framework agreements.

14. ANNUAL REPORT OF BOARD AND STAFF PARTICIPATION IN THE 2002 CALIFORNIA STATE EMPLOYEES CHARITABLE CAMPAIGN

The members were provided with a memorandum from Tom Novi, Kathy Tomono, and Jackie Grassinger concerning the Board's participation in the California State Employees Charitable Campaign (CSECC). Ms. Grassinger reported that the Board achieved 100% participation from the staff with total contributions in the amount of \$1,896.00.

15. CONSIDERATION OF UPCOMING CALIFORNIA MOTOR CAR DEALERS ASSOCIATION FIELD MEETINGS AND DEALER ROUNDTABLES

Mr. Novi reported that no California Motor Car Dealers Association Field Meetings or Dealer Roundtables are scheduled for 2003.

16. REVIEW OF BOARD MEETING DATES SELECTED FOR 2003

The members were provided with a memorandum from Tom Novi and Robin Parker concerning upcoming Board meeting dates. The dates were originally selected by the members at the October 29, 2002, meeting. The January 7, 2003, General meeting date was moved to January 8, 2003. All of the other meeting dates were confirmed.

17. ADJOURNMENT

Mr. Hitchcock announced that he would not seek reappointment to the Board when his one-year grace period expired on January 15, 2003.

Mr. Hitchcock introduced Brian Moss, Esq., Government and Legal Affairs Counsel for the California Motor Car Dealers Association.

Mr. Flesh requested that the Board present Jim Ryan (retiring Senior Vice President and General Manager, Automotive Operations, Western Region, BMW of North America, LLC) with a Resolution for his service to the industry at the January 8, 2003, General meeting. Mr. Flesh also requested that the Board present Jay Gorman (retiring Executive Director for the California Motor Car Dealers Association) with a Resolution for his service to the industry at the April 2003, General meeting.

Mr. Flesh moved to adjourn the meeting. Mr. Stevens seconded the motion. The motion carried unanimously.

With no further business to discuss, the meeting was adjourned at 11:45 am.

Submitted by

TOM NOVI
Executive Director

APPROVED: _____
Frederick E. (Fritz) Hitchcock
President
New Motor Vehicle Board